

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
)  
Plaintiff, ) Criminal Action  
)  
) No. 13-10149-FDS  
vs. )  
)  
EDWARD J. MacKENZIE, JR., )  
Defendant. )

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

SENTENCING

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

March 6, 2015  
2:00 p.m.

Valerie A. O'Hara  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way, Room 3204  
Boston, MA 02210  
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by ZACHARY R. HAFFER,  
4 ASSISTANT UNITED STATES ATTORNEY, and DUSTIN CHAO, ASSISTANT  
5 UNITED STATES ATTORNEY, 1 Courthouse Way, Suite 9200, Boston,  
6 Massachusetts 02110

7 For the Defendant:

8 Dhar Law LLP, by ROBERT M. GRIFFIN, ESQ., 1600 Providence  
9 Highway, Walpole, Massachusetts 02110.  
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1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. You may be seated.  
3 Court is now in session in the matter of United States vs.  
4 Edward J. McKenzie, Jr., Criminal Matter Number 13-10149.

5 Counsel, will you please identify yourself for the  
6 record.

7 MR. HAFFER: Good afternoon, your Honor, for the  
8 United States, Assistant U.S. Attorney Zach Hafer and Dustin  
9 Chao.

02:03PM 10 THE COURT: Good afternoon.

11 MR. GRIFFIN: Good afternoon, your Honor,  
12 Robert Griffin on behalf of Mr. MacKenzie.

13 THE COURT: Good afternoon. This is the sentencing of  
14 Edward MacKenzie, Jr. I have received and read the presentence  
15 report as revised through December 23rd, the defendant's  
16 sentencing memorandum filed March 5th with various attachments,  
17 the government's sentencing memorandum filed February 27th with  
18 various attachments. The defendant's sentencing memorandum  
19 included letters from supporters.

02:03PM 20 To my knowledge, no other materials have been  
21 submitted to the Court. Is there anything else I should have  
22 seen that I have not, Mr. Hafer?

23 MR. HAFFER: No, your Honor.

24 THE COURT: Mr. Griffin?

25 MR. GRIFFIN: No, your Honor.

1 THE COURT: Mr. Griffin, I know you've had a chance to  
2 review the pre-sentence report. Have you gone over it with  
3 Mr. MacKenzie?

4 MR. GRIFFIN: I have, your Honor, at length.

5 THE COURT: Is that correct, Mr. MacKenzie?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Hafer, are there any victims present  
8 who wish to participate in this proceeding?

9 MR. HAFER: Your Honor, I'm not aware of any.

02:04PM 10 Obviously, it's a victim case, and our victim witness  
11 coordinator has contacted various victims, who I know a number  
12 of them are present, but I've not, at least, been given any  
13 notice of any folks who want to make statements.

14 THE COURT: All right. Let me turn then to the  
15 objections in the PSR. There are a number of them. One of  
16 them involved a typographical error that I think was corrected.  
17 There's an objection as to the inclusion of paragraph 79  
18 through 86, which defendant contends does not rise to the level  
19 of obstruction of justice. Do you want to be heard on that,  
02:04PM 20 Mr. Griffin?

21 MR. GRIFFIN: Your Honor, my objection was the  
22 inclusion in the pre-sentence report. The pre-sentence report,  
23 the probation has determined that it did not rise to the level  
24 of obstruction of justice. Obviously, I concur with that  
25 determination, your Honor. I just objected to the inclusion

1 that it simply did not rise to that level, it shouldn't be  
2 included in the order.

3 THE COURT: All right. I'm going to overrule that  
4 objection. As I think you're aware, there's really no  
5 limitation or hardly any limitation on the information that can  
6 be provided to the Court for purposes of sentencing, and I  
7 think that's appropriately part of the record.

8 The next objection is to the application of the  
9 guidelines. In substance, I think defendant contends that  
02:05PM 10 there are four or so adjustments that defendant contends more  
11 or less overlap and lead to an unfair or improper increase.  
12 Mr. Griffin, I'll let you frame the argument.

13 MR. GRIFFIN: As I've noted in the objection, the  
14 defendant's position, your Honor, is that the multiple  
15 enhancements all encompass the same behavior by Mr. MacKenzie,  
16 and for lack of a better term, I consider it to be piling on,  
17 so to speak, in calculating Mr. MacKenzie's guideline range, so  
18 for those reasons, your Honor, I would object to all of those.

19 I believe that certainly at least one of those  
02:06PM 20 enhancements is appropriate, and I believe one of those  
21 enhancements would cover all of the behavior that's contained,  
22 that he's pled guilty to within the indictments, your Honor.

23 THE COURT: All right. I'm going to overrule that  
24 objection as well. The way the guidelines work, for better or  
25 for worse, there often is substantial overlap and duplication.

1 This comes up in virtually all cases involving the combination  
2 of guns and drugs, but I think the same principles apply here  
3 in which you can have, for example, a sophisticated means  
4 enhancement and an abuse of position of enhancement of trust,  
5 and to some extent they do overlap but it's an appropriate  
6 calculation under the guidelines, so I'm going to overrule that  
7 objection.

8 The third objection or set of objections is to  
9 paragraphs 109 through 118 involving what defendants say are  
02:07PM 10 partial contents of conversations with his daughters and  
11 David Stark. Mr. Griffin, do you want to be heard on that?

12 MR. GRIFFIN: Again, your Honor, I don't want to be  
13 repetitive, but the objection is that the snippets that were  
14 included were partial snippets of conversations that  
15 Mr. MacKenzie had while he was incarcerated at Wyatt that were  
16 recorded, and he knew he was being recorded, and my suggestions  
17 to the Court is that hearing just those snippets of the  
18 conversations and those quotes can very easily be taken out of  
19 context, misconstrued and lead to improper conclusions as to  
02:08PM 20 the meaning and the intent of the conversations and the words  
21 that were spoken, your Honor.

22 THE COURT: All right. Again, I'm going to overrule  
23 that objection. Again, I think the information is properly  
24 included in the pre-sentence report for what it's worth, and  
25 then finally defendant objects to a one-point application in

1 its criminal history calculation. Defendant contends that the  
2 sentence in question is outside the 10-year time frame for  
3 prior offenses.

4 Mr. Griffin, do you want to be heard on that?

5 MR. GRIFFIN: Not on that particular one, your Honor,  
6 but I would like to note, your Honor, that as to paragraph 125  
7 in the pre-sentence report where the defendant was charged with  
8 larceny over \$250 in Boston Municipal Court, a jury of 6.

9 THE COURT: Yes.

02:09PM 10 MR. GRIFFIN: That matter indicates that it was  
11 dismissed on November 3rd of 1993. In reviewing the  
12 indictment, Mr. MacKenzie's first alleged criminal -- first  
13 criminal act that he has pled to, the Space Propulsion Act  
14 Racketeering Account Number 1 took place in the spring of 2004,  
15 and I would suggest that that takes that -- that would take  
16 that particular offense, which he received one point for out of  
17 the 10 years, and that that should not be applied.

18 THE COURT: Mr. Hafer, do you want to respond? I  
19 think paragraph 125 involves a continuance without a finding.

02:09PM 20 MR. HAFER: Just factually, your Honor, the conspiracy  
21 which he has pled guilty to is alleged to have begun in  
22 September of 2002. The Space Propulsion wire fraud is the  
23 first racketeering act if conspiracy is alleged, which he's  
24 admitted to, is alleged to have begun gun in September of '02,  
25 so we would agree with the response of the probation office. I

1 was aware he was objecting to 124. I don't know that I was  
2 aware he was objecting to 125. To the extent that the  
3 objection is that it's outside of the 10-year window, it's not  
4 based on the indictment to which he's pled guilty.

5 THE COURT: All right. I'm going to overrule that  
6 objection as well. Again, I think the calculation by probation  
7 as set forth in their response is correct, so I think that  
8 takes care of all the objections to the PSR. Let me turn then  
9 to the guideline calculations, which is my starting point.

02:10PM 10 The base offense level is 7, there's a 14-level  
11 enhancement based on the amount of the loss, a two-level  
12 enhancement because the offense involves sophisticated means, a  
13 two-level enhancement due to a representation that he was  
14 acting on behalf of a religious organization, a two-level  
15 enhancement for abuse of position of trust, and a four-level  
16 enhancement for being an organizer or leader of a criminal  
17 activity. That all adds up to Level 31. There is a  
18 three-level reduction for acceptance of responsibility on  
19 government motion, Mr. Hafer?

02:11PM 20 MR. HAFER: Yes, your Honor, we do make the motion for  
21 the third point.

22 THE COURT: That motion is allowed. That brings us to  
23 a final adjusted offense level of 28, his criminal history  
24 score is 6, his criminal history category is III. That  
25 produces a guideline range of 97 to 121 months, a supervised



1 release range of one to three years, a fine range of \$12,500 to  
2 \$500,000. The restitution amount does not appear to be  
3 disputed. It's \$754,569.74 and a special assessment of \$100 on  
4 each count for a total of \$1,300 is mandatory.

5 Is there any further correction or objection to that  
6 calculation not previously raised? Mr. Hafer.

7 MR. HAFER: No, your Honor.

8 THE COURT: Mr. Griffin.

9 MR. GRIFFIN: No further objections, your Honor.

02:12PM 10 THE COURT: All right. With that then as our starting  
11 point, I will hear from the government as to its  
12 recommendation. Mr. Hafer.

13 MR. HAFER: Yes, your Honor. As you know, we are  
14 recommending in this case a sentence of 144 months, which we  
15 believe is the minimum sentence sufficient, your Honor, in  
16 light of the crimes to which MacKenzie has pled and the life of  
17 crime he has led.

18 At the outset, your Honor, I just do want to note two  
19 First Circuit cases, recent cases in the last four to six cases  
02:12PM 20 of which we became aware since we filed our memo since we are  
21 asking for an upward departure. I just draw the Court's  
22 attention to a case that the First Circuit decided at the end  
23 of January, *U.S. v. Santiago-Serrano*. That's a case in which  
24 the government recommended a sentence of between 168 and 210  
25 months, and the District Court Judge imposed a sentence of 360

1 months, and the First Circuit recently affirmed that sentence  
2 finding it was not substantively unreasonable.

3 Then a couple weeks ago in mid-February in the case of  
4 *U.S. v. Diaz Bermudez*, a drug and gun case, the government  
5 recommended a sentence of 60 months, and the Judge ultimately  
6 sentenced the defendant to 108 months, 48 months or  
7 approximately 80 percent higher than the government's  
8 recommendation, and a few weeks ago the First Circuit affirmed  
9 and found that sentence was not substantively unreasonable.

02:13PM 10 Your Honor, the crimes in this case took place over  
11 more than a decade. This is not some hand-to-hand drug buy or  
12 felon in possession case in which defendants are routinely  
13 sentenced to stiff sentences for crimes that at least  
14 temporally are very, very short, this is a case in which the  
15 defendant, who as you know now is a life-long con man and  
16 violent felon devised a complex scheme to infiltrate and then  
17 commandeer a wealthy Boston church, and he did so, your Honor,  
18 for the sole purpose of lining his own pockets, and the  
19 lewding, which was sophisticated and extensive and which I'll  
02:14PM 20 get to in more detail a moment was considerable.

21 It took place over almost 11 years, and we strongly  
22 believe at the outset, your Honor, that your sentence needs to  
23 reflect the fact that this is not a one-day crime, a one-hour  
24 crime or a one-week crime but an 11-year crime, and who were  
25 the victims of this crime? It was a church, a church, a church

1 with an extensive history of providing for the sick, the  
2 downtrodden and the needy, and instead of receiving charity  
3 from the church, what happened to the millions of dollars that  
4 would have gone to the needy and the homeless, it went to  
5 Foxwoods, Luxor, Mandalay Bay, \$90,000 Cadillacs, Lexuses,  
6 luxury boxes at the garden and things, your Honor, like drug  
7 rehabilitation treatment for a girl who was 15 ears old at the  
8 time the defendant started dating her and got her hooked on  
9 Oxycontin.

02:15PM 10 In fact, your Honor, this crime not only took place  
11 over 11 years, it not only involved vulnerable victims,  
12 deprived of many acts of kindness and charity, it was  
13 sophisticated, and it was so sophisticated that one of the most  
14 prestigious firms in Boston, Todd & Weld, who represented this  
15 church for 10 years didn't even know it was going on for almost  
16 10 years while they were representing the church and during the  
17 entire racketeering conspiracy in this case.

18 How was this crime sophisticated? It was  
19 sophisticated in two ways: In the traditional white collar  
02:16PM 20 sense in that MacKenzie was able to amass votes, critical votes  
21 to take over a board, was able to change the by-laws of the  
22 corporation for his own benefit, was able to secede from the  
23 general convention of the Swedenborgian church, the typical,  
24 sophisticated white collar frauds, but it was also  
25 sophisticated, your Honor, in that it relied on MacKenzie's

1 well-earned reputation for violence, and this is how it worked,  
2 to con the good people of the Swedenborgian church, MacKenzie  
3 presented himself as a redeemed mob enforcer, someone who  
4 sought salvation for the prior bad deeds of his life, and as  
5 unfortunately the folks in this church learned the hard way,  
6 nothing could have been further from the truth because lest  
7 anyone cross MacKenzie during these 11 years or challenge his  
8 authority, he was at the ready with an autographed copy of his  
9 book, *Street Soldier* and the threat don't make me come out of  
02:17PM 10 retirement, and that's where we now morph, your Honor, into the  
11 3553(a)(1) factors and the history and characteristics of this  
12 defendant.

13 It's a defendant that as we said in our memorandum has  
14 been conning, manipulating and victimizing the vulnerable for  
15 his entire life. These crimes are spelled out, these prior  
16 crimes in some detail in the PSR, in our sentencing memo, but  
17 they're also described by MacKenzie himself in *Street Soldier*:

18 Crimes like pouring scolding hot coffee on a victim  
19 and then threatening him with a beating if he testified against  
02:17PM 20 MacKenzie. The result of that case, dismissed.

21 Crimes like a prior federal drug conviction in the  
22 significant South Boston narcotics conspiracy of the early  
23 '90s, a crime for which MacKenzie ultimately received a  
24 sentence of probation, crimes like a multi-hundred thousand  
25 dollar swindle of an unsuspecting elderly woman, no jail time.

1 Crimes like threatening to chain your ex-wife's ankles  
2 to a cinder block and throw her off a bridge if she testified  
3 honestly in a workman's comp. case, case dismissed.

4 Crimes like biting off and swallowing someone's  
5 finger, vicious attacks on unsuspecting and innocent gay men,  
6 attacks, I might add, your Honor, that according to his own  
7 book, he enjoyed, no jail.

8 And then there's this case for which Mr. MacKenzie has  
9 been incarcerated since May of 2013, and as set forth in our  
02:18PM 10 memorandum and in the pre-sentence report, during that time,  
11 he's proved not only that he is a risk to recidivate, but he's  
12 already recidivated:

13 Insurance fraud, witness tampering, witness  
14 intimidation, lying to the Quincy District Court, attempting to  
15 lie to pretrial in this case, and what do all those cases have  
16 in common? Not only is he continuing to commit crimes in jail,  
17 but with those, he used his own daughter to facilitate the  
18 crimes, and that, amazingly, isn't even the worst of it.

19 As set forth in the pre-sentence report since he's  
02:19PM 20 been incarcerated on this case, MacKenzie has encouraged his  
21 own daughter to have sex with what he described is a nasty  
22 inmate and to have sex with his girlfriend so she wouldn't  
23 sleep with other men while he was incarcerated. Is there  
24 anything worse?

25 Finally, your Honor, I just want to say a few words

1 about the defendant's sentencing memorandum which we received  
2 last night at midnight and in which he asks you to downwardly  
3 depart and sentence him to 48 months, which we don't view as a  
4 serious recommendation, but, nonetheless, telling in many ways.

5 It's as if, in fact, your Honor, he's trying one final  
6 con. He submits for you sentencing letters, which as you now  
7 know from the pre-sentence report, many of which he edited  
8 himself to prevent you from hearing things that the people that  
9 were writing letters for him actually said, things like the  
02:20PM 10 young -- well, at the time young girl who started off her  
11 letter by referring to the fact that she met MacKenzie when she  
12 was 14 and they started dating, and he sent her back that  
13 letter and scratched that off and said I don't think the Judge  
14 needs to hear that, he might not understand, even though you  
15 are old enough.

16 Things like Mr. Diehnell, Amos Diehnell, who submitted a  
17 letter last night who initially in his letter talked about  
18 MacKenzie's book, *Street Solider*, and how much he enjoyed it  
19 and that he was a violent felon, and then Mr. MacKenzie got  
02:20PM 20 ahold of that, edited that out and said, you know, the Judge  
21 doesn't need to hear that.

22 Things in the sentencing memo that we read last night,  
23 your Honor, like the defendant disowning *Street Solider*, saying  
24 it was his author, it was his author and not him, but to be  
25 clear, your Honor, we have no evidence, and no one in the grand

1 jury in this case testified that MacKenzie put any such  
2 disclaimer on that book when he used it to facilitate the years  
3 and years of crimes he committed at the church, and in a final  
4 act of chutz·pah, MacKenzie attaches to his sentencing  
5 memorandum for your review and asks you to rely on certificates  
6 of commendation for his leadership of this church at the  
7 height, at the pinnacle of the racketeering conspiracy,  
8 certificates from the various political figures, from the state  
9 house, from the state senate talking about his good work at the  
02:21PM 10 church and his good deeds in 2006 while he's lining his own  
11 pockets and robbing the church blind.

12 In conclusion, your Honor, and as we said in our memo,  
13 after far too many years of preying on society's most  
14 vulnerable members, it's time to hold Edward MacKenzie  
15 accountable. Justice is required in this case, your Honor,  
16 it's required for the church, it's required for the homeless  
17 and the needy, who were deprived services because of this  
18 crime. It's required for all his victims over the years,  
19 including Jane Doe, the poor 15 year-old girl who he got hooked  
02:22PM 20 on OxyContin.

21 There are no words for this behavior, and there is no  
22 sentencing too harsh. Fairness requires at least what the  
23 government is seeking here. The public is not safe if  
24 MacKenzie is on the street, and deterrence is not served by a  
25 guideline sentence. 3553(a) is not satisfied by any sentence

1 less than 144 months, and justice is not served for any of  
2 MacKenzie's victims by any sentence less than 144 months.  
3 Thank you, your Honor.

4 THE COURT: Thank you, Mr. Hafer. Mr. Griffin.

5 MR. GRIFFIN: Your Honor, Mr. MacKenzie stands before  
6 the Court having pled guilty to various offenses. He's 57  
7 years of age. As I noted in my memorandum, Mr. MacKenzie was  
8 abandoned at the age of four by his parents. He was brought up  
9 in a hostile, abusive and neglective foster care system.

02:23PM 10 Mr. MacKenzie is what he is, your Honor, I'm not here  
11 to tell you that Mr. MacKenzie did not, was not complicit in  
12 this conspiracy. He was complicit in it, he was involved in  
13 it, however, your Honor, the government makes a significant  
14 issue of the book that Mr. MacKenzie is the author of.

15 The book details acts that happened a lifetime ago.  
16 They were over 30 years old. Your Honor, the book says what it  
17 says. I'm not issuing any disclaimer in the sentencing  
18 memorandum, however, the book was written by someone else.  
19 Mr. MacKenzie did sell the rights to it.

02:24PM 20 The book was written in conjunction with him. I am  
21 not suggesting to the Court that that wasn't the case, however,  
22 Mr. MacKenzie had no authority over the final product. Some of  
23 the instances that are detailed in that book are true, some are  
24 not true.

25 Mr. MacKenzie has, in spite of the government's



1 characterization of his behavior, Mr. MacKenzie has worked to  
2 the best of his ability to turn his life into a productive  
3 life. As you noted from one of the attachments, he's earned a  
4 Bachelor of Arts degree from the University of Massachusetts.  
5 He has done significant work. In spite of what he has done in  
6 his criminal life, he has done significant works in attempts to  
7 help other disadvantaged youths.

8 As far as his involvement with the church, your Honor,  
9 the government makes the point that Todd & Weld didn't know  
02:25PM 10 anything about what was going on there, but the truth is the  
11 facts are, your Honor, that at every board meeting --  
12 Mr. MacKenzie was not a board member. At every board meeting,  
13 there was an attorney from Todd & Weld at that board meeting.  
14 There was an attorney from Todd & Weld that drafted every  
15 change to every bylaw. There was an attorney that advised the  
16 church regarding the changes in these bylaws, so Todd & Weld  
17 was aware of what was going on.

18 The attorney general of the Commonwealth did an  
19 intensive investigation of the church in 2004 and entered into  
02:26PM 20 a consent decree with the church regarding their oversight of  
21 nonprofit organizations within the Commonwealth long before  
22 anything that Mr. MacKenzie is alleged to have done.

23 Your Honor, there are a number of people that are  
24 involved in this conspiracy. Mr. MacKenzie is the only one  
25 charged. Every single contractor, every plumber, every

1 carpenter, every floor installer, the boiler fire persons, they  
2 all willingly paid Mr. MacKenzie gratuities and kickbacks to  
3 get the jobs. Nobody else has been charged. Mr. Kennedy was  
4 also a driving force, at least as culpable as Mr. MacKenzie and  
5 never charged in this conspiracy.

6 Your Honor, as I said, Mr. MacKenzie is 57 years of  
7 age. I would suggest that a 48-month incarceration is going to  
8 bring him into his '60s upon his release. He at that point in  
9 time, I would suggest, poses no threat to the public. His  
02:27PM 10 career is over at that point in time, your Honor, and I would  
11 suggest to the Court that the interests of justice would be met  
12 by a sentence in the range of 48 months.

13 I would ask the Court to consider imposing such a  
14 sentence and depart downward from the guideline range as  
15 requested by my sentencing and other issues raised in my  
16 sentencing memorandum, your Honor.

17 THE COURT: Thank you, Mr. Griffin. Any brief  
18 response, Mr. Hafer?

19 MR. HAFFER: Not really. This is a factual matter,  
02:28PM 20 your Honor, Mr. Kennedy was charged, Mr. Kennedy did plead  
21 guilty. It's not in this indictment, but we never comment,  
22 obviously, on ongoing investigations, but he was in fact  
23 charged and pled guilty.

24 THE COURT: Mr. MacKenzie, do you wish to address the  
25 Court before I impose sentence?

1 THE DEFENDANT: Yes, your Honor. I'm not going to  
2 stand here and try to profess my innocence, your Honor, I'm  
3 guilty. I took kickbacks, sir. All my life, I've been known  
4 as a giver. I don't live in a mansion, I don't drive these  
5 expensive cars. I had a four-, five-year old car.

6 I just -- I can't believe the mistakes, the poor  
7 choices that I made doing this. I'm so very, very sorry to the  
8 Court, to your Honor, to everybody here, my grandchildren. I  
9 have two daughters that I got custody of in 1998 and I've been  
02:28PM 10 raising. Their mother died in 2012, and they've been  
11 struggling with heroin addiction problems. They are 20 and 21,  
12 and I'm all they have, and when I got indicted, I had them into  
13 a two-week program, and they were getting out in two weeks, and  
14 they come out, and now they're homeless because of me and my  
15 poor choices and my actions.

16 If the Massachusetts General Hospital called today and  
17 said one of my kids was involved in an accident and I had to  
18 get there to give my heart for a heart transplant, it would be  
19 my last day on earth, your Honor, that's how much I love and  
02:29PM 20 care about my children.

21 I'm not going to address these jailhouse conversations  
22 about what was said. I think it was taken out of context.  
23 People that grow up in my neighborhood, we think differently,  
24 and we talk differently, your Honor, and we joke differently  
25 than other people may view it. I'm very sorry it was taken in

1 the wrong way, but as I said before, I would die, I would give  
2 my life for any one of my children, and there's not one person  
3 that doesn't know me that knows what a great father I am and  
4 how much I've always been there, and I'm absolutely heartbroken  
5 that I have my two young daughters right now that have nothing  
6 and are bouncing around from kids' houses to friends' houses  
7 hoping for their father to come home.

8 I'm really, really, really sorry, your Honor, and I  
9 know when this ordeal is over, which was brought on by myself,  
02:30PM 10 I'll go out and get a full-time job, I'll do whatever it takes,  
11 and I'll repay whatever money I owe to anybody, and I'll do  
12 whatever I have to do.

13 I'm just sorry, your Honor, I'm just sorry for my  
14 family, what I did and what I did to this Court and everybody  
15 to have to go through this. I just stand before you to give my  
16 justice. I'm so sorry.

17 THE COURT: Thank you, Mr. MacKenzie. I am very much  
18 aware that any person that I sentence is a human being, and I  
19 always try to see, if I can, not only what the person has done  
02:31PM 20 that's bad but what, if anything, is either good in their life  
21 or might be an excuse or a mitigating factor, whether the  
22 defendant or the person is remorseful, whether the person could  
23 be rehabilitated and make a positive contribution to society.

24 I'm struggling here under the circumstances to find a  
25 mitigating or redeeming qualities in Mr. MacKenzie. He's I

1 think obviously intelligent, although he has not used his  
2 intelligence for productive purposes as near as I can tell. He  
3 appears to love his children, although even that is in doubt.  
4 Certainly there's evidence that he was attempting to involve  
5 his children in either criminal acts or acts that are  
6 unpleasant or disreputable.

7 He is perhaps remorseful, but I can't say that I  
8 accept that in its entirety, and I think the bottom line here  
9 is he's an adult man, he's not a child, he's not a teenager,  
02:32PM 10 he's not a headstrong young man. He hasn't committed a crime  
11 of passion or a momentary lapse in judgment. He has engaged in  
12 a multi-year, decade-long episode of criminal activity that was  
13 complex and sophisticated and driven as near as I can tell  
14 entirely by greed.

15 We all make choices in life. We have to live with the  
16 consequences of those choices, and Mr. MacKenzie has made his  
17 choices here and will have to live with the consequences of  
18 those choices.

19 Sentencing is a difficult process. There are multiple  
02:33PM 20 purposes. They overlap, and sometimes they act at cross  
21 purposes. Often what's best for the defendant is not what's  
22 best for the victim, and it's not what is best for the public.  
23 Sometimes the aspect of sentencing that's retributive, that's  
24 about punishment overwhelms the other considerations of  
25 sentencing.

1 Sometimes given the crime, the defendant, all the  
2 circumstances, it becomes the dominant consideration, and I  
3 think this is one of those cases. Again, his history is what  
4 it is. He is a life-long con man. There is certainly reason  
5 to believe he has an extensive history of violence, even if it  
6 is for the most part in the past. He wrote this book, I  
7 haven't read it, only the excerpts that the government has  
8 submitted, but either it's true or it's not and reinforces the  
9 fact that the defendant is someone who lies and deceives people  
02:34PM 10 on a regular basis.

11 The victim here is a church. Most of the church  
12 governance consists of people who are elderly. The crime was  
13 huge and sophisticated. He stole massive amounts of money from  
14 a church, from a charity, and what do I have to balance against  
15 all of that? The answer is not very much. He had a difficult  
16 childhood. I accept that. Again, he's now 57. He is  
17 intelligent enough to have contributed to society, but at the  
18 age of 57, he hasn't done that yet, and I don't really see much  
19 prospect of him doing so in the future.

02:35PM 20 And so I think under the circumstances I think the  
21 government has it about right. Mr. Hafer said that no sentence  
22 was too harsh. I don't know whether that's true or not. I'm  
23 not going to higher than the government recommendation, but I  
24 am going to accept it. I think this is an unusual case where  
25 an upward departure under the sentencing guidelines is

1 appropriate given his criminal history, the fact that his  
2 criminal history does not appear to reflect or his criminal  
3 history category does not appear to reflect the adequacy of his  
4 criminal history, the nature and circumstances of the crime,  
5 the nature and circumstances of the man, his life up to this  
6 point, the victim.

7 The long and sorted history that Mr. MacKenzie has and  
8 brings to court here today all suggest that a lengthy  
9 punishment is really the only sensible option on the table, and  
02:36PM 10 I'm going to adopt it.

11 I don't do that lightly. I don't do that with  
12 pleasure. I never enjoy sentencing anyone to any lengthy term  
13 of incarceration. I understand that he has family and friends  
14 who will be severely impacted by what I do, but, again, those  
15 are consequences of choices that he made and that he himself  
16 will have to live with and bear responsibility for.

17 With that, I'm going to formally state the sentence  
18 I'm going to impose. When I have finished formally stating it,  
19 I'll give the attorneys a final opportunity to make any further  
02:37PM 20 objections or corrections or additions to that sentence before  
21 I finally impose it.

22 Mr. MacKenzie, would you please stand. Pursuant to  
23 the Sentencing Reform Act of 1984 and having considered the  
24 sentencing factors set forth at 18 United States Code,  
25 Section 3553(a), it is the judgment of the Court that the

1 Defendant Edward J. MacKenzie, Jr. is hereby committed to the  
2 custody of the Bureau of Prisons to be imprisoned for a term of  
3 144 months. This term consists of terms of 144 months on each  
4 count to be served concurrently.

5 Upon release from imprisonment, the defendant shall be  
6 place on supervised release for a term of three years. This  
7 term consists of terms of each count such terms to run  
8 concurrently. Within 72 hours from release from the custody of  
9 the Bureau of Prisons, the defendant shall report in person to  
02:38PM 10 the district to which the defendant is released.

11 It is hereby ordered that the defendant shall make  
12 restitution totaling \$754,569.74 to the following entities or  
13 persons in the amounts indicated: To the Boston Society of the  
14 New Jerusalem, Incorporated, \$704,569.74; to Peter O'Connell,  
15 \$40,000; to Michael Perry, \$10,000.

16 Any payment made that is not payment in full shall be  
17 divided proportionately among the parties named. The  
18 restitution shall be paid by the defendant jointly and  
19 severally with the defendant convicted in a related sealed  
02:39PM 20 case.

21 Payment of the restitution shall begin immediately and  
22 shall be made according to the requirements of the Federal  
23 Bureau of Prisons' inmate financial responsibility program  
24 while the defendant is incarcerated and according to a  
25 Court-Ordered repayment schedule during the term of supervised



1 release.

2 All restitution payments shall be made to the Clerk,  
3 United States District Court for transfer to the identified  
4 victims. The defendant shall notify the United States Attorney  
5 for this district within 30 days of any change of mailing or  
6 residence address that occurs while any portion of the  
7 restitution remains unpaid.

8 The Court grants the United States motion for entry of  
9 a preliminary order of forfeiture. While under the probation  
02:40PM 10 office's supervision, the defendant shall comply with the  
11 following terms and conditions:

12 The defendant shall not commit another federal, state  
13 or local crime and shall not illegally possess a controlled  
14 substance.

15 The defendant shall refrain from any unlawful use of a  
16 controlled substance.

17 The defendant shall submit to one drug test within 15  
18 days of release from imprisonment and at least two periodic  
19 drug tests thereafter not to exceed 104 tests per year as  
02:40PM 20 directed by the probation office.

21 The defendant shall submit to the collection of a DNA  
22 sample as directed by the probation office.

23 The defendant shall comply with the standard  
24 conditions that have been adopted by the Court, which are set  
25 forth at Section 5D1.3C of the Sentencing Guidelines and which

1 will be set forth in detail in the judgment.

2 The defendant is prohibited from possessing a firearm,  
3 destructive device or other dangerous weapon.

4 The defendant shall pay the balance of any restitution  
5 owed according to a Court-ordered repayment schedule.

6 The defendant is prohibited from incurring new credit  
7 charges or opening additional lines of credit without the  
8 approval of the probation office while any financial  
9 obligations remain outstanding.

02:41PM 10 The defendant is to provide the probation office  
11 access to any requested financial information which may be  
12 shared with the financial litigation unit of the U.S.  
13 Attorney's Office, and it is further ordered that the defendant  
14 shall pay to the United States a special assessment of \$1,300,  
15 which shall be due immediately.

16 You may be seated.

17 In terms of the formal reasons for the sentence, it is  
18 an upward departure from a guideline sentence. It is also a  
19 nonguideline sentence imposed under Section 3553(a) and having  
02:41PM 20 considered the factors set forth in that statute.

21 I'm imposing a term of supervised release of three  
22 years in order to help the defendant adjust to a  
23 noninstitutional lifestyle and to ensure adequate supervision.

24 I'm imposing no fine in light of the lengthy prison  
25 term and the three-year period of supervised release. The

1 combined sanction is significantly punitive, and no additional  
2 sanction by means of a fine is required, and to the extent that  
3 the defendant has any financial resources now or in the future,  
4 those resources should go to pay restitution of the victim  
5 rather than to be paid to the United States by way of a fine,  
6 and the special assessment is of course mandatory.

7 Do counsel have any addition or correction or  
8 objection to that sentence not previously raised? Mr. Hafer.

9 MR. HAFER: No, your Honor.

02:42PM 10 THE COURT: Mr. Griffin.

11 MR. GRIFFIN: Your Honor, I would ask the Court to  
12 consider staying the order of restitution until he's released  
13 from prison.

14 THE COURT: I will not stay that order. Again, the  
15 amounts that prisoners contribute to things like restitution  
16 tend to be almost nominal. They are relatively small, but I  
17 think it's an important part of the process, so I will not stay  
18 that order.

19 Anything else, Mr. Griffin?

02:43PM 20 MR. GRIFFIN: No.

21 THE COURT: All right. The sentence is hereby imposed  
22 as stated.

23 Let me give Mr. MacKenzie his advice of rights.  
24 Mr. MacKenzie, you can appeal your conviction if you believe  
25 that your guilty plea was unlawful or involuntary or if there

1 was some other defect in the proceeding that has not been  
2 waived. You may have a right to appeal your sentence under  
3 some circumstances, particularly if you think the sentence was  
4 contrary to law.

5 If you're unable to pay the costs of appeal, you may  
6 ask permission to have those costs waived and appeal without  
7 pain. You must file any notice of appeal within 14 days after  
8 the entry of judgment, and if you request, the clerk will  
9 immediately prepare and file a notice of appeal on your behalf.

02:43PM 10 Is there anything further, Mr. Hafer?

11 MR. HAVER: No, your Honor.

12 THE COURT: Mr. Griffin?

13 MR. GRIFFIN: No, your Honor.

14 THE COURT: All right. Thank you. We'll stand in  
15 recess.

16 THE CLERK: All rise.

17 THE DEFENDANT: Your Honor --

18 THE COURT: Let's stay on the record. Mr. MacKenzie.  
19 Why don't you consult with your counsel before you address me.

02:44PM 20 THE DEFENDANT: I wanted to know if I could file a  
21 notice of appeal on record and request an appeals attorney for  
22 that, your Honor, please.

23 THE COURT: In terms of requesting the appeals  
24 attorney, that's at a different stage, but, Mr. Griffin, do you  
25 want to handling the filing of a notice of appeal?

1 MR. GRIFFIN: I will do so, your Honor, yes.

2 THE COURT: Thank you. We'll stand in recess.

3 (Whereupon, the hearing was adjourned at 2:44 p.m.)

4

5

6 C E R T I F I C A T E

7 UNITED STATES DISTRICT COURT )

8 DISTRICT OF MASSACHUSETTS ) ss.

9 CITY OF BOSTON )

10

11 I do hereby certify that the foregoing transcript,  
12 Pages 1 through 29 inclusive, was recorded by me  
13 stenographically at the time and place aforesaid in Criminal  
14 Action No. 13-10149-FDS, UNITED STATES OF AMERICA vs. EDWARD J.  
15 MacKENZIE, JR. and thereafter by me reduced to typewriting and  
16 is a true and accurate record of the proceedings.

17 Dated this 1st day of September, 2015.

18

19 s/s Valerie A. O'Hara

20

21 VALERIE A. O'HARA

22 OFFICIAL COURT REPORTER

23

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